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449  
A N

# ENQUIRY

INTO THE

NATURE and LEGALITY

O F

PRESS WARRANTS.

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Misera est Servitus, ubi Jus est vagum, aut Incog-  
nitum. — — 4th INSTIT.

It is found by Experience, that whenever the unconstitu-  
tional Oppressions, even of the Sovereign Power, ad-  
vance with Gigantic Strides, and threaten Desolation to  
a State, Mankind will not be reasoned out of the Feel-  
ings of Humanity. BLACKSTONE, Vol. I.

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O N D O N:

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A N  
E N Q U I R Y  
I N T O T H E  
N A T U R E and L E G A L I T Y  
O F  
P R E S S W A R R A N T S.

**I**F ever the face of the times, may be said to authorize a Publication of this nature, it is surely at the present juncture. Among the many injuries and oppressions, which have so long and so severely harassed this country; among the many grievances and apprehensions, which have issued from every quarter of it; among the many daring attacks and infringements on the Liberty of the Subject; none demands a more serious consideration, than the present mode of impressing men, for the not as yet declared purposes of ministry:

stry : an expedient, it is true, resorted to by former administrations, but under circumstances, and at times, far different from the present. The custom of raising seamen by impress, has long been a matter of contention among the subjects of Great Britain. It is one of those few points which, notwithstanding all that has been said upon it, still remains undetermined ; in vain have the wisest lawyers employed all the powers of rhetorick to discountenance so barbarous a procedure ; in vain have the ablest writers employed their pens, in expatiating on its cruelty and injustice ; no redress has hitherto been pitched upon ; no lenient alternative been pointed out ; the Free-born Briton is still left to complain of a measure as tyrannical in itself, as pernicious in its tendency ; a measure not to be paralleled in the annals of the most slavish dominion ; and will a nation, whose greatest ornament is its freedom ; will a people, who boast their liberty as a birthright, tamely sit down contented under a measure, the most arbitrary that human understanding can



can suggest. At the present critical juncture, and on so important a subject, the author of the following pages thinks himself, in common with every good citizen, called upon to lay before the impartial public, his sentiments on this assumed power of government; for however demonstrative it may, at first view, appear of the speculative politician, to merge all regard for the sufferings of individuals, in his views to the interest of the collective body, yet the man of feelings and humanity, cannot steel his heart against the impulses of compassion, nor shut his ears to the doleful complaints of anguish and distress; the repinings of widowed wives, or the tears of forlorn infants; he will at least examine the measure, on the strict grounds of reason, of law, and of justice; if it clashes with them, he will surely condemn it; otherwise he will as warmly support it. In the perusal of the ensuing Enquiry, the reader is only requested to do so; for the author offers nothing dogmatically, nor has he the pre-

sumption to lay down any position as decisive.

The grand object of all government, should be to render the lower class of people easy and contented ; a nation will never derive either honour or disgrace from the power of a few individuals ; the grandee may exert his utmost influence ; the rich man may boast the power of gold ; or the blustering orator, may for a moment impose upon his audience ; and by captivating their senses, induce them to adopt whatever opinion he pleases ; but it is not the machinations of a statesman, the power of ill-got thousands, or the mere force of argument, that can ever do this nation any essential injury ; that will ever render us happier at home, or more formidable abroad ; (not that I would be thought to discountenance the avowal of a just resentment, whenever ministers, or their masters, dare to trample on the established rights of a free people) but whatever intestine broils such disputes may occasion, so long as the common people (who are the chief support of a nation) remain

remain contented with the mode of government, we need be under no apprehensions about the party cabals of a day, which will of themselves soon subside, and leave no trace behind. If then the commonalty (which no one has ever been hardy enough to deny) are the support of a nation, and that our ancestors considered them as such, is sufficiently apparent, from the great care they have taken in the formation of the law, so as to render it of equal benefit to the meanest as to the highest subject; for next to the extreme tenderness, with which it proceeds against all criminals whatever, there is nothing more admirable, or indeed more amiable, than the impartiality, which it on all occasions maintains; nor indeed can we ever be thankful enough for the benefit of living in a country, where the legal means of proceeding are so regular, that any man, on a proper application, is sure of obtaining sufficient redress, for whatever injury he may sustain; and tho' the law, like all other good institutions, may sometimes be abused, and made a cloak for

roguery

roguery and oppression, we should remember, that human wisdom never yet could, and, I may venture to say, never will be able to frame an institution (however salutary) which human chicanery would not find means to evade. But to return from this digression ; allowing then, I say, that the lower class of people are the support of a nation ; I cannot but think it very bad policy in administration, never yet to have attempted, to substitute some more eligible method of manning their fleets, than by the present unjustifiable one of pressing ; and which is more particularly cruel, as it can only affect that class of people, whom, according to the old maxim, of (*salus populi, suprema lex*) it should be their first care to render easy and contented : but as this is an alteration which can never take place, till some more eligible method is pointed out ; and as no one has yet thought it worth their while seriously to recommend any other ; unequal, as I may be, to so arduous an undertaking, inspired by a love of my country, and an emulation (I hope laudable)

ble) of contributing to the happiness of those around me, I have for once ventured into the ocean of politicks ; and after having examined Press Warrants, with all the cadour I am master of, I will then throw out some hints, for the removal of so just a ground of complaint, which the abler head of some patriotic statesmen, may hereafter carry into execution : thrice happy shall I be, if my feeble efforts may any ways tend to remove so great an evil : but before I proceed, it may not be improper to say a word or two, on Press Warrants, as they appear in a general light, as well to shew their design, as to point out to the world their inconsistency. In a country, where it is our greatest boast to be governed by laws, made by ourselves, by laws almost amounting to perfection ; in which the whole voice of the body at large is employed ; not the arbitrary dictates, or slavish edicts of a despotic prince ; it may very reasonably be expected, that every regulating principle of our conduct, must be founded on the basis of natural justice,

national

national policy, and law ; and that whatever institution does not coincide with these three, can by no means be denominated either legal or constitutional. If therefore, in our investigations on the present point of enquiry, we cannot reduce it to one or other of the foregoing heads, we may fairly pronounce it to be illegal and irrational ; indeed, if it clashes with any one of them, a discordance with the rest will be an inevitable consequence ; for whatever is inconsistent with natural justice, must be irreconcilable to law ; and national policy is so intimately connected with the other two, that when they fail, *that* must of course fall also : but to give so bad a subject all the fair play in our power, we will examine it according to them all.

It has always hitherto been imagined, that one part of the regal power is, in times of emergency, by the advice of the Privy Counsel, to issue out warrants for the impressing of seamen ; and because custom, and custom only, has given this proceeding a kind of incontrovertible authority,

thority, no man has yet dared to dispute it ; tho', at the same time, government can produce no other argument in it's favour, than the vague, superficial one of it's having been practised for many years past ; which they ratify by shewing us some subsequent acts, made in different reigns, relative to the manner of impressing, the condition of the impressed, and from whence they conclude, there must have been some prior act, to authorize the thing itself, or that these secondary ones would never have been made ; an inference as inconclusive, as arbitrary ; not that this is the only reason, which may be assigned for no one's having ever brought this important question to a legal decision ; a much more forcible one is, that, according to the present mode, no one can be affected by it, but such as are utterly incapable of withstanding the united power of ministerial influence ; which, on such an occasion, would infallibly be exerted ; and even, if a man of property was liable to the effects of a Press Warrant ; I am very much afraid, the age we

live in is so corrupt, that it would be difficult to pitch upon any one, who would have courage to put the legality to the test; who would dare to avow himself an enemy to oppression, and like a certain Patriot, offer up his own liberty, to insure that of his fellow countrymen; nor can I (foreign as some people may think it to the subject) help drawing the parallel between General and Press Warrants; for I believe, till Mr. Wilkes made that glorious stand, against the arbitrary power of General Warrants, very few men in the kingdom had the least idea of their illegality; and by parity of reasoning, I will venture to say we shall never see an annihilation of Pressing, till some man, who has power to carry on, and inclination to commence an affair of that nature, shall, like Mr. Wilkes, convince the publick, that they have hitherto been made the dupes of ministerial tyranny. But to proceed, I will only beg the most partial advocate for Press Warrants, to employ one minute in reflecting on their inconsistency, and strenuous



as he may have hitherto been in their favour, unless he is resolved to shut his eyes against all conviction, he will no longer uphold so absurd a custom. It is an incontrovertible maxim in all oppositions, that one side must be right, and, vice versa, one wrong ; but unless I am very much misinformed, the nature of a Press Warrant is such, that if the lieutenant of the gang, in the attempt of pressing a man, was to commit murder, he would not be amenable to justice, but would be acquitted, from having done it *ex officio* ; and on the other hand, if any one, whom they were attempting to press, was likewise to be guilty of the aforesaid crime ; neither would he be liable to punishment ; but would have an acquittal from the plea of self-defence—strange contradiction, where murder on either side is palliable ! This at once sets them in the strongest light ; they either are right or wrong ; if the former, no man that comes within their tenure, can by law resist them, and undoubtedly would (if murder was the consequence of such resistance) be open to

the extremest rigour of the Law ; as much so, as the man who was to kill a constable, or any other peace officer, in the execution of his duty : on the other hand, if they are unsupported by law, if they have nothing to justify them, but the absurd plea of custom, they are in every respect unwarrantable ; and the officers, who execute them, have no justification for the violence they too frequently make use of ; but are liable, and ought to be brought to condign punishment. Having thus then exemplified the inconsistency of Press Warrants, and therein in a great measure their impropriety, I shall next proceed to make some remarks on their cruelty ; a very little will be necessary to be said on such a subject, charity and benevolence have always been the prevalent characteristics of this nation ; and I may venture to say, that no age ever had so just a title to the epithet of Humane, as the present ; no age has been more remarkable for a strict observance of the duties of philanthropy, or more extolled for an uniform performance of those duties. In such an age,

age, and to such people, I need not take much time to expatiate on the horrid barbarity of Press Warrants; every man's heart will bear testimony of their cruelty: will any one be absurd enough to argue in favour of a measure, which authorizes the depriving a family of their only support; which justifies the tearing a man, from every near and tender connection, which deprives the wife of her husband, the children of their parent; which in a manner cancels those bonds, that God has sealed, and violates every law human and divine; which snatches the unhappy victim of oppression, at a time, when perhaps his presence is most requisite at home? Can human nature conceive a shock equal to what a wife must feel, when drooping on the bed of sickness, with the fondest impatience, she expects the return of the partner of her heart; and counts every minute an hour that keeps him from her arms? Can, I say, any heart, but her own, be sensible of the torments she endures, when she learns, that he is hurried without the privilege of one parting farewell,

well, from all that he holds dear ; gone far, far from her, near whom he would for ever wish to live and die ; and to render the poignancy of such a blow more severe, loaded perhaps with the cutting reflection, that being deprived of his comforting assistance, that dear woman, whom he has so often embraced with rapture, those pledges of their mutual love, are left exposed to all the rigorous inclemency of the season, and all the misery of unhoused poverty ? Well am I aware, that in an age when conjugal affection is loaded with the name of weakness, such a picture will meet with very little credit from the fashionable part of the world ; but if this should chance to fall into the hands of any one, whose understanding is unwarped by prejudice, and who has a heart to feel, and disposition to sympathize in such distress, turn, turn, from the scene, and let the drops of pity, which are ready to fall at the recollection of distress, be converted into contempt, for the inventors and upholders of such a custom ; a custom the more particularly oppressive, as there is no guard-  
ing

ding against its effects, nor indeed hardly any redress to be obtained for the injuries it is productive of; for such is the mode of proceeding, that when once a man is so unhappy, as to come within the verge thereof, however urgent, or important, the business which he is then about may be, no regard is paid to it; deaf to his prayers and intreaties, he is immediately dragged away to the rendezvous; and that with less ceremony, and more rancour, than the most abandoned criminal is hurried to justice; from hence, after a short interval, he is carried before a regulating captain, whose business it is to object to those, whom he deems improper for the service he is intended for; which part of their duty, indeed, were they to be strictly observant of, the evil would not be near so flagrant as it now is; for, according to the tenor of their warrant, they are authorized to take no men but vagrants, who have no visible means of a livelihood; or such as have before been at sea, and even not them, if they are settled at home, and pay scot and lot; these orders,

ders, however, are paid very little regard to ; and unless a man is absolutely disabled, he is immediately hurried on board a tender, and, at the hazard of suffocation, confined below deck, where he is denied the use of pen, ink and paper, nay even the privilege of informing his family of his destination, or sending for his cloaths, and but barely supplied with the necessaries of life ; in which manner he is suffered to remain, till put on board his respective ship. If daily experience did not convince us of the truth of this account, who among us would not be rather apt to consider it in the light of a fiction, than as regular proceedings in a free country. How are we to reconcile such actions as these with that idea of liberty which every Englishman, from his childhood, has been taught to cherish and protect ; but to have done with the cruelty of Press Warrants, which I am sure every reader must be convinced of, let us now proceed to examine them, on the three grand principles of natural justice, national

tional policy and law ; and here I confess I feel a diffidence, which would almost tempt me to desist from my design ; for after the learned disputes, which many eminent men have had on this point, it undoubtedly argues great presumption, to pretend to decide on a question, which has so long been a matter of contention ; tho' indeed I did not offer my sentiments as infallible, I shall always be open to conviction, and ready to acknowledge my errors, which too hasty a way of judging may have led me into ; and under this sanction, shall make no scruple of avowing my opinion. And first as to natural justice. In the discussion of this point, it will be proper on the one hand, briefly to consider man, in a state of nature ; and on the other, as a member of society, surrendering part of his natural liberty, for the more secure enjoyment of the remainder ; taking him then in the first point of view, he will appear to us totally unrestrained by any laws, but those of Nature and of God—unconnected with other individuals—unconscious of any superior,—without any

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regulat-

regulating rule of civil conduct,—knowing, and consequently acknowledging, no greater power upon earth; hence will it naturally follow, that he is obliged to no earthly power for that protection, which alone can demand a return of his personal services, and a sacrifice of part of that liberty, which is naturally implanted in his breast; but as by his nature we find him formed for society, with wants that will not permit him to live alone; and without courage to resist these fears, which must attend him, in a solitary state, it introduces him to our consideration as a member of society, into which as his wants and fears obliged him to enter, so in return for that protection, which society affords, must we suppose him to surrender some of those rights, which he was master of in a state of nature: this naturally brings on the second head, under which we are to consider him; namely, as engaged in society; and as society consequently draws after it, government, it follows of course, that man, on his first entrance into society, resigned to some superior, so much of his  
natural



natural liberty, as was deemed necessary, to maintain him in possession, of the more essential branches of it; the principal of which was his life, his personal security, and property; for instance he relinquished that power, which in an unrestrained state of nature, he had over the life of his fellow creature, as a consideration for being secured in his own; he resigned all power he might in a state of nature have over the liberty of another, for the more secure enjoyment of his own personal liberty; and he surrendered all pretensions, which the advantage of superior strength might give him, over the property of his neighbour, in consideration of the safety promised to himself.—Thus far the original contract of society went; but it would be counteracting nature, as well as wandering into an extravagance, inconsistent with man, in this simple state, to imagine that the superior of this society was invested, with an implicative power, of commanding the personal service of each member, whenever his own ambitious designs, or those of part of the body, may

induce them to a desire of conquest, or an extension of territory ; I say, it cannot be reasonably supposed, nor will it follow, from any position, which can be fairly laid down, that man, in attempting to be free, should subscribe to measures, which must constitute him a slave ; by acknowledging a power in any superior, of seizing on his personal liberty, whenever state purposes, or the caprice of any man or body of men, may seem to require it : if we cannot then suppose him thus inattentively relinquishing his rights, in the very efforts of supporting them, then must we allow him an absolute, and exclusive right, both in his original state of nature, and in his more refined state as a member of society, to freedom, uncontrouled freedom of person, except where he forfeits those rights, by offences against social duties, or infringements of the original contract ; of course all attempts to curtail this liberty, or to seize on his person (be the purposes what they may) must be considered as repugnant to natural justice ; as militating  
 against

against the great laws of nature and of society.

I am aware, that national policy, may be superinduced by the advocates for this measure, to qualify what I have observed in considering the foregoing head, and that much may be relied on, as to the benefits, accruing to each individual, as well as the body at large, from our connexions with foreign nations,—and the additions to our territories by colony and conquest ; which (it may very justly be observed,) can no more be maintained, than they were first gained, without a proper force to be occasionally exerted in their defence ; in this I most readily concur, and am as willing, as the most zealous advocate for the measure, to allow legislature—our agent—the parent of national policy ; every power that is requisite to accomplish the great ends of national advantage, and national defence ; but I will as zealously contend, that one only of the three estates, which constitute a parliament, cannot assume that power, especially when it is a power of so much real importance, as at once to  
determine,

determine, whether our so much boasted liberty is a reality, or a shadow—whether partial ordinances, or ministerial warrants, are to obtain the force of laws ; and flourish in England, with as much vigour, as they do in France ? This, reader, is the question, your heart (if British) I am bold to say, revolts at the idea, while indignant reason scarce will deign an answer. But such a crisis are we arrived at, that the most patient reasoning, the most pathetic expostulations, can scarce preserve the vestiges of our ancient freedom. The three estates, which form our legislature, then being invested with this provisional power, and being (when considered in their proper light) the guardians of our rights and liberties, must of course be supposed to have the grand object of national policy, so far in view, as to have taken every measure proper for the defence and security of the subjects, otherwise, instead of the title of watchful, we may substitute that of the slumbering centinels of the state ; but as that would be an imputation, as wrong in it's nature, as affronting to our judgments,

ments,

ments, for having chose them, we should rather suppose, that every law, requisite for the purposes of state, has existence, then we may naturally enquire, whether any law, authorising this measure, can be found? And this will lead me to consider the national policy, and legality of this step (the two remaining divisions) in one and the same point of view; for it would be inconsistently absurd, to imagine that any measure, irreconcilable to the law of the nation, can be conducive to it's advantage.

In England, where (as a very judicious writer observes) the law is both the measure, and the bond of every subject's duty and allegiance, each man has a fixed, fundamental inherent right, both as to freedom of his person, and property in his estate, which he cannot be deprived of without his own consent, or the commission of some crime, for which the law has imposed such a penalty or forfeiture; now for the regulation of each individual's conduct, there are fixed and positive rules; which are all comprized  
under

under the Common or Statute Law, the two branches, into which our laws are divided ; under one or other of these divisions the right of impressing men (if such a right legally exists) must be contained ; for, as on the one hand, they include all that government is entitled to, for its protection of us ; so, on the other, do they contain all we are entitled to as subjects. To an inquirer into this subject then, it will appear not a little strange, that in all the writers, who have treated of the prerogative of the crown, on the one side, or the duty of the subject on the other, no such right as that of impressing is contended for ; in vain may he recur to the books of Common Law ; in vain may he resort to the Statutes ; in neither will he find any law declaratory of such a power ; he may range through the voluminous Reports, and even there only one case will present itself to his view ; I mean that of Broadfoot, as reported by Sir Michael Foster, in the 154th page of his Crown Law, and there even, tho' the Recorder, who like other Recorders, had an eye

eye to the Bench, to which he was soon after preferred, laboured the point as much as he possibly could for ministry, still Broadfoot was acquitted of the murder. The *ex partê* argument, of the Recorder, on that occasion, which he is pleased to give us fully in his report of the case, attempts, however, to prove the legality of the measure ; tho' he premises in an advertisement, prefixed to the report ; that " if it be asked, where are the adjudged cases, on which the reporter grounds his opinion ? He freely confesses, he has not met with one, in which the legality of pressing for the sea service has directly come into judgment," tho' he says, " there are some modern ones, from which it may be *inferred*." A less remote inference, from this sentence, would incline us to think, that the learned Recorder must, in his own mind, tacitly condemn the measure, previous to the existence of the "*modern cases*" he alludes to ; as he fairly acknowledges, there was no foundation for it in law ; and as he leaves his reader in the dark about the modern authorities, which

we may reasonably suppose, he would have been more particular in, if such really existed. Nothing offers to make us consider the measure in a more favourable light; and I apprehend, even this case would not be so generally and emphatically relied on, in justification thereof, if it was understood in the limited sense, the Reporter himself assigns it, when he says, his business is not “to inquire, Whether persons may be legally pressed into the land service; or whether *land men* may be legally pressed into the sea service? Whether people may be taken from their lawful occupations at home, and sent against their wills, into a remote and dangerous service? &c.” but only, “Whether mariners may be legally pressed into the service?” I say, if Sir Michael Foster’s own words are to be relied on, his argument will not have that general force, which the advocates for pressing would give it; but allowing it the utmost extent they can desire for it, and that he meant Press Warrants should legally extend to other persons, as well as mariners, what is  
proved.



proved thereby ? Surely the mere dictum of a lawyer, uncorroborated by any authority, will not obtain the force of law ; are a few hypothetical positions, laid down for the purpose of drawing partial conclusions, sufficient to account for so dangerous an innovation ? Or will the warmest advocate on the side of the prerogative, attempt to reason us out of our liberties, by reference to such precedents ? If so, farewell, a long and last farewell, to all that is dear to us as Englishmen. Let us no longer boast our liberty, or flatter ourselves with the hopes of independency, while it is in the breast of a minister to require, and in the power of a judge, at one blow to sacrifice so essential a part of our birthright, and our freedom : but (thanks to our iron ancestors, who, at the expence of blood and life, ensured us from such attempts) the case is otherwise ; our personal security is grafted on the firm basis of law, and nothing less than an act of the legislature can diminish or impair it. Strangers as we are to the wretchedness of subjects, in arbitrary

E 2                      monarchies,

monarchies, where the mere will of the prince is law; where his word takes off any man's head, deprives him of liberty and of property; we do not subscribe to the maxim of "*quod principi placet, legis habet vigorem*"—our king is subject to, not above, the Laws; for, according to the great Fortescue and Bracton,—"*rex in regno suo, superiores habet, deum & legem*": hence it follows, that no proclamations can hurt our liberties, no royal edict can impair our personal security, nor can any ordinance effect our properties. Having thus then, I hope, sufficiently convinced every impartial reader, of the illegality of Press Warrants, I come to point out their impropriety, which, after what has already been said, it will not be very difficult to do; for whenever any thing is proved to be inconsistent, cruel and illegal, it will be a deducible consequence, that it must be improper; not that I intend to perform my promise to the reader, by so dogmatical a mode of argument. I would wish to convince his judgment, not impose upon it, and had much rather find myself

myself deceived, than endeavour to gloss over false principles, with the specious ornament of sophistical arguments ; what I mean by saying Press Warrants are improper, is, that they are utterly incompatible with the fundamental principles of this constitution, which, on all occasions, recommends the extremest lenity and tenderness ; inasmuch so, that, according to it's own maxim, “ *in causa juris, nulla est cunctatio longa,*” it ordains the nicest circumspection, to be used in all cases, where the property or welfare of even a single individual is at stake ; and if it requires so much consideration, when only one man can be injured, how much more cautious ought we to be, how we subscribe to any measure, where not only our own liberty, and *libertas auro pretiosior est*, but that of our children is the point of question. I am not to be told, that the advocates for Pressing will answer this, and indeed every other argument, that can be made use of against it, by the stale plea of court necessity ; a plea, which, in all ages, and on all occasions, has been  
made

made use of for the vilest and most abandoned purposes ; and which tyrants and robbers have and may again produce, to justify the most shocking series of villainy, that human nature can be guilty of ; and indeed, I confess, I shudder, at the thought of hearing any man admit the illegality of an action, and yet argue for it's necessity ; which, if once admitted, will open such an inroad for arbitrary oppression, that it will be impossible to draw the line.—Little tyrants may then range unchecked in every street.—In the land of liberty.—The land whose every inhabitant, has hitherto boasted an unlimited freedom. The privileges and immunities, which have been the price of so much blood ; and which our forefathers have handed down to us, with so many injunctions to preserve sacred and undefiled, will become forfeit ; and this hitherto so happy country will be made a scourge for barbarous oppression ; and even if these consequences were not to follow, I can by no means allow the necessity ; which I will presently consider more diffusely than I have now done.

Indeed,

Indeed, according to the footing on which our sailors now are, I grant the posture of affairs may be such, as to render it absolutely necessary for the safety of the state, to raise a certain number of men, at a short warning; for which (if they cannot be otherwise acquired) it may be necessary to have recourse to Press Warrants; but if the navy was to be put under proper regulations, such force would seldom or never be requisite; for were the sailors to have a more just and equal distribution of Prize Money, that alone would be a great incentive to their free enlisting, whenever there should be a sudden demand for them; but if we for a minute take a retrospect of the proceedings in the last war, what inducements shall we find for a man to risque his all, in the service of his country; when, after having bravely fought, and richly earned his due, that due is wrested from him; when one man, who was never in the least danger, is suffered to return laden with the spoils of the enemy, and appropriating to his own use, what ought to be the reward of thousands,

fands, while they are discarded with a scanty pittance, and no other prospect, but that of earning a precarious subsistence by their manual labour. Blush ye connivers at such shameful injustice; and since it is too late to prevent what is past, endeavour to make some restitution, by painting such villains to the world in their true colours.

Drag forth the legal monsters into light;  
Wrench from their hand oppression's iron  
rod;  
And bid the cruel feel the pains they give.

THOMSON.

But the warmth I have insensibly acquired on this subject, has almost made me lose sight of the point I had in view, which, according to the promise made at the beginning of this Pamphlet, is to throw out a hint, for the substitution of some more eligible method of raising men, than by force, and which, to our shame be it spoken,

ken, is practised in no other country but this.

It has more than once been hinted, that a rotation, something similar to the Militia, would be likely to answer the end proposed; but for my own part, for numberless reasons, I think such a scheme would be impracticable; one with much more probability of success would be, to oblige every man above the age of seventeen, who has not 20 l. a year estate, either freehold or copyhold, to enter his name in a register, which should be kept for the purpose; from whence it would be an easy matter to extract such men, as a committee should adjudge proper for the service, each of whom should, when out of employment, be allowed 3 l. a year; and after having had their names five years on the register (during which time they should be obliged to appear on being summoned) they should have a discharge given them from serving the rest of their lives; except they should, at the expiration of their term, be abroad on any service; in which case, they should be

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obliged to remain there till ordered home. According to the best calculation I can make, the succession of inhabitants in this kingdom is such, that there would always be a sufficient number on the books to answer any emergency ; and the making them an allowance, when out of employment, and giving them a discharge after five year's service, would be a sufficient inducement to every man to enter his name. I do not present this plan to the publick as perfect, I only mean it as a hint, for any one, who has a mind seriously to recommend something of the kind to Government ; what I have said, has been absolutely from a desire of adding to the liberties of Englishmen, which I shall never think they perfectly enjoy, till I see a total abolition of Press Warrants ; but to have done with this, and to return to the necessity thereof.

The old threadbare pleas of custom and necessity, are much relied on by Sir Michael Foster, and after him, by the celebrated Blackstone, who (warmly as he in other respects has espoused the interest of

ministry,



ministry, and exerted himself for the extension of prerogative;) still, in treating of this point, he very scrupulously avoids giving us any opinion of his own: indeed, he allows it to be a matter of some dispute, and submitted to with much reluctance; tho' he evasively introduces judge Foster's words, as amounting to prove, from the long usage of it, that it has become part of the Common Law: if we are obliged to him for any one sentence of his own, it is, where he says, that it is only defensible from public necessity, to which all private considerations must give way;—tho' in the same sentence he allows, “there are other ways, which tend to the increase of seamen, and manning the Royal Navy.” Indeed, such a strain of caution runs throughout what he says on the subject, that we are at a loss, whether to admire his ingenuity, in evading the more nice discussion of the matter; or to lament, that so eminent and able a writer, when he found administration could not be served, chose rather to be silent, than benefit the public, by the investigation of a

matter of such national importance. I must however observe, that it would do much greater honour to his candour, as well as his discernment, to recite Serjeant Foster's words, in the limited manner they were spoken, than to indulge himself, in a generality of *Expression*, which leaves the matter more open to ministry, than was designed; for where the Reporter talks of the power of impressing *Mariners*; Mr. Blackstone has it, the power of impressing *Men*; whether design or inadvertency occasioned the misrecital, it is plain, the alteration favoured ministry.

Thus far I thought it necessary to observe, with regard to the only authorities, which can with any shew of propriety be adduced towards the legality of Pressing; in examining them hitherto, I only considered the sense, in which the respective authors meant they should be received; and how far they corresponded; it now remains for me to combat, the pleas of custom and necessity, which are so much relied on, and which, if refuted, will  
leave

leave all the rest of the reasoning in favour of this matter, destitute even of a specious colour.

According to the law writers, all *customs* to obtain the force of law, must be good, that is, they must be legal; *Malus usus abolendus est*, is an old maxim; many are the requisites for a good custom, among others are the following necessary ones.

1st, It must have been used time immemorial; for if any one can shew the beginning of it, it is no good custom.

2dly, There must have been an uninterrupted continuance; any interruption would cause a temporary ceasing; the revival gives it a new beginning, which will be within memory, and thereupon the custom will be void.

3dly, It must have been peaceably acquiesced in, not subject to contention or dispute; for as customs owe their original to common consent, their being disputed at law, or otherwise, is a proof that such consent was wanting.

4thly, They must be reasonable, or, rather taken negatively, they must not be unreasonable.

5thly, Customs must be certain, not vague or inconclusive, &c. &c.

Hence it appears, that in the composition of a custom, there must be immemorial usage, uninterrupted continuance, a peaceable acquiescence, reasonableness and certainty. Ingredients which are absolutely inconsistent with the nature of the custom now contended for ; that it is not immemorial, will appear from the time being precisely fixed, when the measure was first attempted. That its continuance has been interrupted, follows naturally, from there being several temporary cessations of it, and repeated intervals, when no such measure existed. That it was not peaceably acquiesced in, is strongly proved, from the very case reported by serjeant Foster : besides, Mr. Blackstone grants it to be a case, which produced much dispute and contention. That it must be unreasonable, is a consequence of its clashing with natural justice, as has already been

been

been sufficiently proved under another head ; for whatever is naturally inconsistent, must be reasonably so ; and that it must be uncertain, follows from the occasion that gives rise to it being precarious ; no certitude in either time or number, no certain period, for the service of the men impressed, no precise certainty of rank or condition : thus then does this part of the justification of the measure fall to the ground ; nor will its concomitant necessity remain long, after divested, as the point now stands, of the plea of custom, which I trust has been sufficiently refuted ; it remains for me to consider it, on the footing of necessity ; and in so doing, it will appear not a little strange to the reader (who has already been informed, that legislature are invested with provisional powers, of providing laws for every exigency of the state) why a matter, of such national importance, as the right of pressing men, is pretended to be, should be left, unsupported by any act of theirs, for such a number of centuries ; why it should rest on the poor, stale, threadbare  
 plea

plea of necessity ; I say, this will appear strange, if we annex to it the weighty idea, of its being absolutely requisite for the purposes of national security ; but a better reason cannot be brought, to disprove the necessity of it, than that it has been so overlooked ; it would be making a poor excuse indeed, for legislature to say they forgot it ; when, according to the arguments on the other side, the well being of the state depends upon it ; it would be in effect, accusing the great guardians of our rights and liberties, of inexcusable inattention to the interest of their constituents, and of the body at large, to admit an idea of their having surrendered, into the hands of government, one of our most invaluable rights, the right of security of person ; to guard and to defend, which is the very essence of their institution, especially when we see them so studiously and zealously providing laws, for the protection of their own persons, the maintenance of their rights and dignity ; to avoid the colour of such an imputation, we should rather consider the point not legally provided

vided for, because not absolutely necessary. It may indeed be urged, that as the power of making Peace and War, is vested by prerogative in the King, it consequently follows, that one of those powers, that of making war, would be useless, without men to carry it on ; and that the Prince, as the proper arbiter, is best judge when war should be made, and what the requisite measures are for conducting it ; but I am apprehensive this inference will not be much relied on by government, lest it may draw after it another consequence, which may more immediately affect them ; I mean that of the King's having (by a conclusion drawn from similar premises) an implicative right, in such cases, over the subjects property ; for if the one inference is allowed, it is pregnant with the other ; if he, of necessity for the purpose of exercising what prerogative entitles him to, has an inferred right to demand the persons, so may he the purses of his subjects ; but this is a doctrine which, I apprehend, will not be subscribed to, by the persons that compose

administration ; for thereby their properties, tho' not their liberties, may be affected ; whereas, by the other, the poor and industrious only can be immediate sufferers. A melancholy reflection ! Yet too true, that however more useful members of the state, the *Poor*, are found to be than the *Rich* (a point universally allowed) yet their liberties and personal security should rest on far slighter and more precarious grounds ; which is diametrically repugnant to the principles of a constitution like ours ; where the rays of freedom beam alike on every individual in the state ; and diffuse their influence so powerfully throughout the whole, that the monarch and mechanic have only one common source to resort to, in ascertaining their freedom.

Again, if this right of judging when the actual *Necessity* exists, is allowed to center in government, a resulting right consequently follows ; whereby we must also allow it a discretionary power of providing for that necessity ; such an allowance, I am bold to say, would be inevitable ;



table; and then must every Englishman become tenant at will of his liberty; a precarious tenure, indeed, and one of so slight a texture, that it would be almost impossible to ascertain the difference, between freedom and slavery; for what makes the distinction between a slave and a free-man, is, that the happiness of one is in his own power; and that of the other in the hands of his master; as was mentioned, on a somewhat similar occasion, by one of the greatest judges of, as well as friends to, the English constitution, that ever sat in the House of Commons. However happy this Nation may be under the present government, however safe in an administration, which will not misuse so great a power, is not the author's business to enquire, let his readers judge of that; it is enough for his purpose, that future governments, and future ministers, who we know from experience may not be infallible, may turn it to bad account: how much is in their power has been shewn, and what they may do, has been often fatally experienced. An expedi-

tion to the Holy Land, from a bigotted zeal, has often excited former Kings, to waste our best blood and treasure, in fruitless attempts, without a prospect of serving their dominions. Future Kings may perhaps be still more wrong-headed, and may exact from their subjects, as matter of right, founded on the pleas of custom and necessity, that personal service and attendance, which was formerly the result of mistaken religion.—Continental engagements and German connexions may embark us in wars, inconsistent with the true interest of the nation, of course, not of necessity for its security. But why murmur? Our service is required by Government, and according to such reasoning, they only are best judges of the necessity; and in their *Discretion*, may exert the measure for national preservation;—but let it not be dignified with that name: Can the nation be preserved, at the expence of its most invaluable rights? Can it be happy, when the personal security of each individual is likely to be sacrificed?—When the peace, indeed the support of families,

families, must be in perpetual danger of falling victims, to what the advocates for this measure would speciously stile the *Defence*; but what may more deservedly be entitled the *Destruction* of the nation.

Besides, in the present case, it is not disputed, but that other expedients may be resorted to; nor is it asserted, that any such have been tried; will it then be contended for, that where there is an alternative, there can be a necessity; or that where legislature may, in their wisdom, devise other more lenient methods, so rigorous and oppressive a one, should be resorted to in the first instance; and that without the sanction of any legislative authority, without any known or established law to support it.

True it is, the partizans of ministry will adduce some acts of parliament, recognizing something like such a right; not expressly put by implication; not enacting it for a perpetuity, but allowing it only for particular purposes; not general, but limiting it entirely to water-

men

men and seafaring persons—made rather to second temporary exigencies, than to vest in the crown, such an important power ; considered in this point of view, it can never be supposed, that mere inference and implication, or the partial constructions of disjointed sentences, in any act of parliament, can operate against the sacred and solemn charters of our freedom, and the several acts made to enforce and perpetuate them.—Common sense and reason loudly say, No. Besides, it is a most generally received opinion in law, that nothing less than one act of parliament, can repeal another ; if so, then it may be reasonably supposed, that the 29th *Chapter* of *Magna Charta*, still continues in force ; if it does, there is not a doubt, but all such inferences and implications must give way to it. For the benefit of my readers, I shall here transcribe it, with Lord Coke's Comment thereon.

“ No freeman shall be taken or imprisoned, or be disseised of his freehold,  
 “ or

“ or liberties, or free customs, or be out-  
 “ lawed, or exiled, or any otherwise def-  
 “ troyed ; nor we will not pass upon him,  
 “ or condemn him, but by lawful judg-  
 “ ment of his Peers, or by the law of the  
 “ land.” This Chapter, as a very inge-  
 nious writer says, “ deserves to be writ-  
 “ ten in Letters of Gold.” It is the  
 Elixir of our Freedom ; the Storehouse of  
 all our Liberties. My lord Coke (no  
 less enamoured with it) divides it into  
 nine branches ; so much as immediately  
 relates to our subject, I shall give the  
 reader, verbatim.

“ No man, shall be exiled, that is,  
 “ banished, or forced to depart, or stay  
 “ out of England, without his consent.  
 “ By the law of the land, no man can be  
 “ exiled, or banished out of his native  
 “ country ; but either by *Authority of*  
 “ *Parliament*, or in case of abjuration  
 “ for felony, by the Common Law ; and  
 “ so when our books, or any record, speak  
 “ of exile, or banishment, other than in  
 “ case of abjuration, it is intended to be  
 “ done

“ done, by *Authority of Parliament* ; and  
 “ therefore the King cannot send any sub-  
 “ ject of England, against his will, to  
 “ him out of this realm ; for that he  
 “ should be an exile, and that he should  
 “ *perdere patriam*. No, he cannot be  
 “ sent, against his will, into Ireland, to  
 “ serve the King, or his deputy there ;  
 “ because it is out of the realm of Eng-  
 “ land ; for if the King, might send him  
 “ out of this realm, to any place ; then,  
 “ under pretence of service, as ambassa-  
 “ dor, or the like, he might send him,  
 “ into the furthest part of the world ;  
 “ which being an exile, is prohibited by  
 “ this act.”

It would be, the author apprehends,  
 swelling this enquiry to an immoderate  
 size, as well as paying an ill compliment,  
 to the very great authority, he has just  
 now adduced, were he to go into the  
 many reasons, which may be brought, to  
 prove, that no inference, or implication  
 whatever, can have any weight, when op-  
 posed thereto. We shall, therefore, only  
 pray

pr.<sup>y</sup> the reader's attention to the words of Lord Chief Justice Hale, Vol. 1st, who, speaking of the legality of pressing, which he seems much to doubt of, says, "He who looketh upon the acts, enabling pressing soldiers, and mariners, for foreign service, upon, or beyond the sea, may think those times made some doubt of it; but of this I deliver no opinion." A concession, which, as an honest man, he thought he could not avoid; and which, considering him in the capacity of a judge, at a juncture, when the office was not for life, must be as strong, as could reasonably be hoped for, towards acknowledging the illegality of the measure.

Thus, after considering the power of pressing, as contrary to natural justice, national policy, and law; it is presented to the reader, divested even of the pleas of custom and necessity; the only props, advanced for its support. To encounter it farther, in so listless a situation, amounts almost to cowardice; but 'ere we take a final leave, it may not be improper, to

add a few remarks on its inexpedience and danger in a land of commerce; taking it even in its most confined sense, the right of impressing mariners only. It will require a very small degree of ingenuity to prove, that a constant supply of able mariners, is indispensably requisite, for the purposes of carrying on, both foreign and inland trade; without which, we should neither be the happy, or the formidable people we are: granting this, it will follow, that every discouragement to the increase of mariners, will be an injury to trade; which of course must be a material prejudice to the state; now, how can this be more certainly effected, than by means of such a measure as the present? When this brave body of men, the sources of our security and wealth, behold themselves in a worse situation, than other Britons, subject to the nod of a minister, the ambition, or whim of government; when they behold their liberty, liable to be sacrificed, as an atonement for the mistakes of Administration; when, in short,



short, they find that, in this country, a sailor, and a slave, will be analagous terms, Where is their encouragement? Their brave and manly sentiments will teach them rather to quit their employments, than their liberty, and retire to other countries, where they will be only slaves in common, with the rest of the people; and not have the mortification of seeing that freedom, which they, and they alone, must not share.—The parent, under these circumstances, will not enter his son, in an occupation, which promises so little likelihood of success; and which may probably disable him, from being a prop and support to his declining age.—Thus, such as are their own masters, and such as are at the disposal of others, will decline the business; this will oblige the merchant, either to have foreign hands, or to give an exorbitant price for English; and hence there will naturally be, a vast increase on the value of all commodities: so that by this method of manning our navy, though it may answer the present

end, we materially and lastingly prejudice our commerce. Besides all this, it is a measure very far from expedient, for men, who are so unwillingly forced into the service, will as reluctantly fight ; especially, when they have last war so fresh in their memories ; and see that, however bravely they behave, still the fruits of their valour, and the emoluments of victory, are monopolized by others ; while they, after many an hard fought battle, are dismissed the ungrateful service, without provision or reward ; unless, indeed, they have the good fortune (for so it may be called) to lose a limb, or be otherwise disabled.

To the inexpedience of the measure, may be added its impropriety in another respect ; for while the time is spent, in issuing these warrants, publishing proclamations, and picking up sailors, man by man, the enemy consider these steps as so many declarations of War ; they have notice of our intentions ; and it is not to be wondered at, that our secrets are divulged,

vulged, our schemes disconcerted, and our politicks made the laughing-stock of Europe. On the whole, the practice of pressing men, being illegal, unconstitutional, and impolitick, as repugnant to the true spirit of genuine freedom, as it is destructive to commerce; and the exertion of such a measure, being sufficient to create jealousy and discontent in the minds of his Majesty's subjects; it were much to be wished, that the ends, proposed by it, could be effected by any other method. Let us be double taxed for the time; let a neighbouring kingdom, long burthened with the payment of Pensions,——the venal wages of Royal Prostitutes, —— and of Wretches, who have basely sold their own, and Countrymen's Liberties: —— let *Her*, I say, be exonerated from the shameful load, and have the pleasing alternative, of contributing to the support of those Heroes, who have hitherto been, and may hereafter be, instrumental in her protection; — in short, let some Plan be devised;  
that

that there are *many* is certain——and as certain, that with less pains, than is usually bestowed on scheming a next year's Lottery ; or proving 293 to exceed 1146, some Mode may be devised, less rigorous, and more effectual.

F I N I S.







